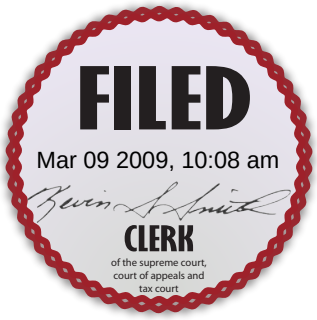

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE CONTEMPT OF ARTHUR MILES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0809-CR-806
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G23-0711-FA-241316

March 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Arthur Miles appeals his ninety-day sentence for direct contempt of court. Miles argues the sentence was unreasonable because his refusal to testify did not prevent the trial from going forward.[1] We affirm.

FACTS AND PROCEDURAL HISTORY

The State wanted Miles' testimony at a murder trial. Miles indicated he would invoke his Fifth Amendment privilege, and he was granted use immunity. Miles still refused to testify and the trial court found him in direct contempt.

DISCUSSION AND DECISION

A witness may be compelled to testify where a grant of immunity places the witness in substantially the same position as if he had exercised his right to remain silent. *In re Cudworth*, 815 N.E.2d 1019, 1022 (Ind. Ct. App. 2004). *And see* Ind. Code § 35-37-3-3(c) ("If a witness refuses to give the evidence after he has been granted use immunity, the court may find him in contempt."). Accordingly, the trial court could compel Miles to testify under the threat of contempt.

In *Cudworth* the contempt sentence for Cudworth's refusal to testify was six months – twice as long as the sentence imposed on Miles. We analyzed Cudworth's challenge to the contempt sentence using the "appropriateness" standard under Ind.

[1] Miles was sentenced to "flat time," (Tr. at 23), meaning he would not "get any good time credit." (*Id*.) Miles argues only that his sentence was unreasonable. He does not appear to challenge the trial court's determination he would not receive credit time. In at least one instance our Supreme Court has declined to apply good time credit to a sentence for contempt. *In re Crumpacker* 431 N.E.2d 91, 98 (Ind. 1982), *appeal dismissed sub nom. Crumpacker v. Indiana Supreme Court Disciplinary Commission*, 459 U.S. 803 (1982).

Appellate Rule 7(B). That rule authorizes us to revise a sentence if, "after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."[2]

Cudworth had been ordered to testify about matters involving one count in a forty-count RICO prosecution of a defendant with whose enterprise Cudworth had been involved. We determined the nature of Cudworth's contempt rendered his six-month sentence appropriate where his repeated refusal to testify caused a disruptive effect on the trial and was an affront to the dignity of the trial court. *Id*. at 1023.

In the case before us there was evidence Miles was present at the incident that gave rise to the murder prosecution in which he was ordered to testify. Miles asserts his contempt sentence was unreasonable because nothing in the record suggested Miles' refusal to testify prejudiced the State's case.

We decline Miles' invitation to adopt a "prejudice" standard for determining whether a contempt sentence is reasonable. Contempt of court involves "disobedience of

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[2] We noted in *Jones v. State*, 847 N.E.2d 190, 202 (Ind. Ct. App. 2006), *reh'g denied, trans. denied* 860 N.E.2d 587 (Ind. 2006), that the Rule 7(B) appropriateness standard, like the "manifestly unreasonable" standard it replaced, applies to sentences "authorized by statute": "Because there is no longer a statute setting out the punishment for contempt, it is unclear whether Appellate Rule 7(B) should apply in reviewing contempt sentences." We determined Jones' sentence of approximately one hundred and two days was proper under an inappropriateness, manifestly unreasonable, or simple reasonableness test. *Id*.

Still, we applied the "appropriateness" standard in *Cudworth*, which was decided prior to *Jones*, and we have applied it since *Jones* was decided. *See Warr v. State*, 877 N.E.2d 817, 826 (Ind. Ct. App. 2007) (180 day sentence for contempt was appropriate when Warr used vulgar and profane language in the presence of the trial judge, even though she did not do so when the jury was present, as that "showed an extreme amount of disrespect toward the trial court"), *trans. denied* 891 N.E.2d 37 (Ind. 2008).

Miles argues only that his sentence was unreasonable, and does not argue it was inappropriate. As we find Miles' sentence proper under an inappropriateness, manifestly unreasonable, or simple reasonableness test, we need not address which standard governs our review of a contempt sentence.

a court that undermines the court's authority, justice, and dignity." *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005). The authority of a court to sanction a party for contempt is among the inherent powers of a court to maintain its dignity, secure obedience to its process and rules, rebuke interference with the conduct of business, and punish unseemly behavior. *Id*. Accordingly, the effect of the contempt on the eventual success or failure of the prosecution does not determine whether a contempt sentence is unreasonable.

Miles testified he had been friends with the murder defendants for years. He indicated his willingness to testify, then refused to do so even after he was granted immunity. At the time he was ordered to testify, he was serving a sentence for "a dope case." (Tr. at 23.) Miles' refusal to testify under these circumstances was undoubtedly "disobedience of a court that undermines the court's authority, justice, and dignity." *Major*, 822 N.E.2d at 169. Nothing in the record before us suggests Miles' ninety-day contempt sentence was unreasonable.

We accordingly affirm the sentence.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.